

28-65-1. General provisions. (a) ~~Any reference by these rules and regulations to standards, procedures, or requirements of~~ The provisions of 40 C.F.R. Parts 350, 355, 370, and 372, as in effect on July 1, 1998 dated July 1, 2018, shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any notes and appendices associated therewith, unless otherwise specifically stated in these regulations this article of the department's regulations, are hereby adopted by reference. ~~When~~ If the same word term is defined both in the Kansas statutes or this article of the department's regulations and in any federal regulation adopted by reference in the this article of the department's regulations and the ~~definitions are not identical~~ term is defined differently, the definition prescribed in the Kansas statutes or this article of the department's regulations shall control.

(b) ~~When used in any provisions adopted from 40 C.F.R. Parts 350, 355, 370, and 372, as in effect on July 1, 1998, the following changes shall apply:~~ The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) ~~The words~~ "The United States" shall be replaced with ~~the words~~ "the state of Kansas."

(2) "Environmental protection agency," "EPA," and "agency" shall be replaced with ~~the~~ "Kansas department of health and environment," "KDHE," and "department," respectively, unless the term is used in reference to the EPA web site.

(3) "Administrator" ~~or~~ and "regional administrator" shall be replaced with ~~the~~ "secretary of the department of health and environment."

(4) "Federal register" shall be replaced with "Kansas register."

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(5) "40 C.F.R. 350.16" shall be replaced with "K.A.R. 28-65-3(f)."

(6) "This chapter" and "this section" shall be replaced by "these regulations."

(7) "5 U.S.C. 552(b)(4)" shall be replaced by "K.S.A. 65-3015, and amendments thereto."

(8) "18 U.S.C. 1905" shall be replaced by "K.S.A. 45-215 et seq., and amendments thereto."

(9) "The Office of General Counsel, U.S. Environmental Protection Agency, Mailcode 2310A, 1200 Pennsylvania Avenue, NW, Washington DC 20460" shall be replaced by "the Office of General Counsel, Kansas Department of Health and Environment, 1000 SW Jackson Street, Topeka, Kansas 66612."

(c) The following sections shall be deleted:

(1) 40 C.F.R. 350.3(c); and

(2) 40 C.F.R. 350.16. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended June 4, 1999; amended P-_____.)

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28-65-2. Definitions. As used in this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Commission" ~~means the Kansas state emergency response commission established under K.S.A. 65-5703, and amendments thereto~~ has the meaning specified in K.S.A. 65-5702, and amendments thereto.

(b) "Department" means the Kansas department of health and environment.

(c) "Extremely hazardous substance" means a substance listed in the appendices to 40 C.F.R. Part 355, emergency planning and notification, ~~as in effect on July 1, 1998~~ dated July 1, 2018 or on the list of Kansas reportable chemicals authorized by K.S.A. 65-5704, and amendments thereto.

(d) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, that person. For purposes of emergency release notification, the term ~~includes~~ shall include motor vehicles, rolling stock, and aircraft. For the purposes of toxic release reporting, any facility may contain more than one establishment, as defined in 40 C.F.R. 372.3, which is adopted in K.A.R. 28-65-1.

(e) "Federal act" ~~means Title III of the superfund amendments and reauthorization act of 1986, P.L. 99-499, and the emergency planning and community right to know act of 1987~~ has the meaning specified in K.S.A. 65-5702, and amendments thereto.

(f) "Hazardous chemical" ~~has the meaning given to that term by 40 C.F.R. Part 370, hazardous chemical reporting; community right to know, as in effect on July 1, 1998.~~

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~~(g)~~ “Kansas tier II form” ~~or and~~ “tier II form” means mean the hazardous chemical inventory form developed by the Kansas department of health and environment.

~~(h)~~ (g) “Kansas tier II software” means the computer software developed for the Kansas department of health and environment to allow facilities an owner or operator of a facility to file the Kansas tier II ~~information~~ form by electronic submission.

~~(i)~~ (h) “Material safety data sheets (MSDS),” “MSDS,” “safety data sheets,” and “SDS” means mean reporting sheets required under the occupational safety and health act at 15, 29 U.S.C. 651 et seq., as amended, ~~hazard communication program, and~~ 29 C.F.R. 1910.1200, ~~as in effect on July 1, 1998.~~

~~(j)~~ (i) “Operator” means the owner or owner's designee who is director of a business, service, or industrial concern and conducts the affairs or manages an activity.

~~(k)~~ (j) “Owner” means proprietor or the person in whom is vested ownership, dominion, possession, or title of property.

~~(l)~~ “Petroleum fuels” means the following refined petroleum products:

~~(1)~~ Gasoline;

~~(2)~~ gasohol;

~~(3)~~ aviation fuels; and

~~(4)~~ diesel #1 and #2. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999; amended P-_____.)

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28-65-3. Submitting notifications and reports. ~~(a) Except as provided in K.A.R. 28-65-4(e)(3),~~

Each notification and report required to be submitted to the commission under sections 302, and 311, ~~and 312~~ of the federal act and ~~these~~ this article of the department's regulations shall be completed using the Kansas tier II form ~~or the Kansas tier II software~~. The Kansas tier II form ~~or the Kansas tier II software~~, which shall be submitted to the ~~bureau of air and~~ department's radiation control program of the department in hard copy or by electronic submission.

(b) Each notification and report required to be submitted to the commission under section 312 of the federal act and this article of the department's regulations shall be completed using the Kansas tier II software. The Kansas tier II form shall be submitted to the radiation control program of the department electronically.

(c) Each toxic chemical release form submitted pursuant to ~~the requirements of~~ section 313 of the federal act shall be submitted to the ~~bureau of air and~~ department's radiation control program, ~~of the department~~ before July 1 of each year for the previous calendar year.

(e) ~~(d)~~ Each emergency release notification submitted pursuant to ~~the requirements of~~ section 304 of the federal act shall be submitted to the division of emergency preparedness of the adjutant general's department.

~~(d) Hazardous chemical and extremely hazardous substance information submitted under the provisions of sections 302, 311, and 312 of the federal act and subsection (a) of this regulation may be submitted in an alternative aggregate format that includes more than one facility if the following conditions are met:~~

- ~~(1) The facilities reported are under common ownership or a common operator.~~
- ~~(2) A separate listing, including the names and locations of the facilities to which the~~

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~~Kansas tier II form or the Kansas tier II software is to apply, is submitted with the report.~~

~~(3) The chemical types and quantities reported on the Kansas tier II form or the Kansas tier II software are similar and representative of those present at all facilities listed.~~

~~(4) The proposed alternative aggregate format has been previously reviewed and approved by the department for compliance with the requirements of this article.~~

(e) Each owner or operator of a facility required to report under this regulation shall notify the department within 60 days ~~following~~ after either of the following:

(1) A change in the name, address, or both, of the owner or operator responsible for filing the facility report; or

(2) facility closure.

(f) Each claim of trade secrecy under sections 311, 312, and 313 of the federal act and each public petition requesting disclosure of chemical identities claimed as a trade secret shall be filed on a form provided by the department. The address to send all claims of trade secrecy under sections 311, 312, and 313 of the federal act shall be the address on the form provided by the department. (Authorized by and implementing K.S.A. 65-5704; effective, T-88-62, Dec. 30, 1987; effective May 1, 1988; amended, T-89-19, May 27, 1988; amended Sept. 26, 1988; amended Nov. 22, 1993; amended Nov. 28, 1994; amended June 4, 1999; amended P-_____.)

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28-65-4. Fees. (a) Except as provided in ~~subsections~~ subsection (d) and (e) of this regulation, each owner or operator of a facility required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the sum of the maximum daily reportable quantities of extremely hazardous substances or hazardous chemicals, or both, present at the facility as reported on the Kansas tier II form. These fees shall be calculated on forms provided by the department using the tables in paragraphs (c)(1) and (c)(2) ~~of this regulation~~ as appropriate. The fees required under this subsection shall be submitted to the department ~~prior to~~ before March 1 of each year at the time of submission of the Kansas tier II form.

(b) Each owner or operator of a facility required to file the toxic chemical release form required under section 313 of the federal act and K.A.R. 28-65-3 shall pay an annual report fee based upon the total quantity of chemicals released as reported on the federal form R. These fees shall be calculated on forms provided by the department using table 3 in paragraph (c)(4) ~~of this regulation~~. The fees required under this ~~section~~ subsection shall be submitted to the department ~~prior to~~ before July 1 of each year at the time of submission of the federal form R.

(c) ~~Fees payable under subsection (a) of this regulation shall be determined using tables 1 and 2 below as applicable.~~

(1) Fees on the total maximum daily reportable quantity of extremely hazardous substances listed on the Kansas tier II form required under subsection (a) shall be determined using table 1 as follows:

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Table 1

Sum of the maximum daily amounts of all extremely hazardous substances reported (pounds)	Annual fee
1 - 9,999	\$25
10,000 - 999,999	\$50
1,000,000 or greater	\$150

(2) Fees on the total maximum daily reportable quantity of hazardous chemicals listed on the Kansas tier II form required under subsection (a) shall be determined using table 2 as follows:

Table 2

Sum of the maximum daily amounts of all hazardous chemicals reported (pounds)	Annual fee
10,000 - 99,999	\$25
100,000 - 999,999	\$50
1,000,000 - 9,999,999	\$150
10,000,000 or greater	\$300

(3) For the purposes of this subsection, the term "hazardous chemical" shall not include any extremely hazardous substances or sand, gravel, clay, salt, or brine or other comparable substances as approved by the department in the calculation of fees.

(4) Fees payable under subsection (b) ~~of this regulation~~ on the total quantity of chemicals released reported on the federal form R shall be determined as follows:

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Table 3

Sum of the total chemical releases reported (pounds)	Annual fee
100 - 19,999	\$250
20,000 - 99,999	\$700
100,000 - 999,999	\$1,700
1,000,000 or greater	\$3,000

(d) Each owner or operator of an oil or gas well that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall pay an annual fee of \$25. For the purposes of this subsection, the term "well" shall have the meaning ~~given such term by~~ specified in K.S.A. 55-150, and amendments thereto. The fee required under this ~~section~~ subsection shall be submitted to the department ~~prior to~~ before March 1 of each year at the time of submission of the ~~information required on the~~ Kansas tier II form.

~~(e) Each owner or operator of a facility that contains petroleum fuels as defined in K.A.R. 28-65-2 that is required to report under section 312 of the federal act and K.A.R. 28-65-3 shall be exempt from the fee requirements of subsection (a) of this regulation as applicable to petroleum fuels in storage tanks provided:~~

~~(1) The storage tank is registered under the provisions of K.A.R. 28-44-16 or K.A.R. 28-44-29; and~~

~~(2) the owner or operator has paid an annual registration fee in compliance with K.A.R. 28-44-17 or 28-44-28; and~~

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~~(3) the owner or operator has submitted the necessary information to the department on the special storage tank program forms provided by the department to comply with the reporting requirements of section 312 of the federal act, K.A.R. 28-65-3, K.A.R. 28-44-16 and K.A.R. 28-44-29.~~

~~(f) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) of this regulation that has chemicals present other than petroleum fuels that are reportable under section 312 of the federal act and K.A.R. 28-65-3 shall pay annual report fees in compliance with subsection (a) of this regulation as applicable to the remaining chemicals.~~

~~(g) Each owner or operator of a facility that qualifies for a fee exemption under subsection (e) may elect to comply with the provisions of these regulations by submitting the Kansas tier II form in lieu of submitting the required information on the special storage tank program form. Such owners or operators that elect to submit the Kansas tier II form shall calculate and pay annual report fees in compliance with subsection (a) of this regulation as applicable.~~

~~(h) Each owner or operator subject to these regulations shall not be assessed an annual report fee in total greater than \$3000 during any single report year excluding late fees.~~

~~(i) (e) All fees shall be remitted by check, draft, or money order payable to the department and shall be non-refundable nonrefundable. Any owner or operator may make an aggregate payment covering more than one facility by a single check, draft, or money order provided if a statement accompanies each aggregate payment which that indicates the each individual facility names name, addresses address, and fees for each facility the amount of the~~

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fee for which payment is made accompanies each aggregate payment.

(j) (f) ~~Each~~ An owner or operator of a facility subject to ~~these~~ this article of the
department's regulations shall not be charged a fee for chemical information submitted on a
voluntary basis beyond that required under K.A.R. 28-65-3 ~~provided that~~ if the optional nature of
the information is clearly marked in the appropriate box on the Kansas tier II form. (Authorized
by and implementing K.S.A. 65-5704; effective Nov. 22, 1993; amended Nov. 28, 1994;
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